

**Pari-Mutuel Clerks Union of Louisiana, Local Union 328 and Jefferson Downs, Inc. Case AO-239**

15 August 1983

**ADVISORY OPINION**

A petition, and a memorandum in support thereof, was filed on 26 August 1982 and 30 August 1982, respectively, by Pari-Mutuel Clerks Union of Louisiana, Local Union 328, herein called the Petitioner, for an Advisory Opinion pursuant to Sections 102.98 and 102.99 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, seeking to determine whether the Board would assert jurisdiction over labor disputes involving the horseracing industry. On 30 August 1982 Jefferson Downs, Inc., herein called the Respondent, filed a reply to the petition.

In pertinent part, the petition and supporting memorandum and the Respondent's reply allege as follows:

1. The Petitioner asserts that there are currently pending before the Louisiana State Racing Commission, the Louisiana Department of Labor, and the Twenty-Fourth Judicial District Court for the Parish of Jefferson, State of Louisiana, docket No. 270, 725, labor disputes involving the parties.<sup>1</sup> The Respondent asserts that there is no pending action before either the Louisiana State Racing Commission or the State Department of Labor, and that the pending state court action for damages was filed on 17 August 1982 after the Board's Regional Office had dismissed the charge on jurisdiction grounds and after dismissal of the Petitioner's appeal to the Board's General Counsel.

2. The commerce data available to the Petitioner indicates that: the Respondent's gross parimutuel income was in excess of \$53 million in 1981; in conducting its business activities, the Respondent purchased considerable goods and services, and employs many individuals, all of which have an impact on interstate commerce.

3. The above commerce data is admitted by the Respondent.

<sup>1</sup> An unfair labor practice charge filed by the Petitioner with the Board's Regional Office alleging various unfair labor practices by the Respondent was dismissed for lack of jurisdiction.

4. There are no representation or unfair labor practice proceedings involving this labor dispute pending before this Board.

5. As noted above, the Respondent has filed a reply to the petition.

On the basis of the above, the Board is of the opinion that:

The thrust of the Petitioner's argument is that the Board should "reconsider" its policy of declining jurisdiction in labor disputes involving the horseracing industry,<sup>2</sup> or, alternatively, direct the General Counsel to reopen the case and investigate the charges because the considerations applied to horseracing and their impact on commerce are no longer meaningful.

The Respondent contends that the Board should advise that it would not assert jurisdiction by virtue of Section 103.3, footnote 2, *supra*, or dismiss the petition as inappropriate because under Section 102.98 of the Board's Rules and Regulations the only purpose for which an advisory opinion may be obtained is whether the Board would assert jurisdiction on the basis of its current standards.

Under Section 103.3 of the Board's Rules, the Board will not assert jurisdiction over the horseracing industry. Moreover, as the Board's advisory opinion proceedings are designed primarily to determine questions of jurisdiction by application of the Board's discretionary monetary standards to the "commerce" operations of an employer,<sup>3</sup> and as reconsideration of Board policy or of its rules does not fall within the intentment of the Board's advisory opinion rules,<sup>4</sup> we shall dismiss the petition herein.<sup>5</sup>

Accordingly, it is hereby ordered that, for the reasons set forth above, the petition for an advisory opinion herein be, and it hereby is, dismissed.

<sup>2</sup> Under Sec. 103.3 of the Board's Rules and Regulations, Series 8, as amended, the Board will not assert jurisdiction in any proceeding "involving the horseracing or dogracing industries."

<sup>3</sup> See *Follett Corp.*, 223 NLRB 800 (1976); *Pennsylvania Labor Relations Board (George Junior Republic)*, 215 NLRB 323 (1974); *Globe Security Systems, Inc.*, 209 NLRB 35 (1974).

<sup>4</sup> Compare *Max Hirsch v. Frank McCulloch*, 303 F.2d 208 (D.C. Cir. 1962).

<sup>5</sup> See *The New York Racing Association Inc. v. NLRB*, 708 F.2d 46 (2d Cir. 1983).